

§ 904.109

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the monthly payment designated for operating expense (i. e., as a reduction of Project income). In all such cases, the EHPA and the NRMH shall be credited with the amount included in the break-even amount for these accounts.

§ 904.109 Monthly operating expense.

(a) *Definition and categories of monthly operating expense.* The term “monthly operating expense” means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, postage, telephone and telegraph, etc.;

(2) *Homebuyer services.* LHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the LHA as part of operating expense;

(4) *Routine maintenance—common property.* For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the LHA’s responsibility for maintenance (see also § 904.109(c));

(5) *Protective services.* The cost of supplemental protective services paid by the LHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—common property (Contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds, and unanticipated items for non-dwelling structures (see § 904.112).

(b) *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the LHA’s HUD-approved operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. If it is subsequently determined that the actual operating expense for a

fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the difference (see § 904.112(b)). Such adjustment may result in a change in the required monthly payment, see § 904.107(j)(3).

(c) *Provision for common property maintenance.* During the period the LHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis of the total number of homes in the development (i. e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of homes in the development, resulting in the annual amount for each home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property). After the home owners association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the LHA (see § 904.112(b) for nonroutine maintenance of common property).

(d) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and copies shall be provided to homebuyers upon request.

§ 904.110 Earned Home Payments Account (EHPA)

(a) *Credits to the account.* The LHA shall establish and maintain a separate EHPA for each homebuyer. Since the

homebuyer is responsible for maintaining the home, a portion of his required monthly payment equal to the LHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homebuyer's home, shall be set aside in his EHPA. In addition, this account shall be credited with

(1) Any voluntary payments made pursuant to paragraph (f) of this section, and

(2) Any amount earned through the performance of maintenance as provided in paragraph (d) of this section and § 904.111(c).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in § 904.107(a), the LHA shall arrange to have the work done in accordance with the procedures established by the LHA and the HBA and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the LHA and the HBA.

(2) To the extent NRM expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the LHA (see § 904.111), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* The homebuyer may exercise his option to buy the home, by paying the applicable purchase price pursuant to § 904.113 or § 904.115, only after satisfying the following conditions precedent:

(1) Within the first two years of his occupancy, he has achieved a balance in his EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph (a) of this section;

(2) He has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement;

(3) He has rendered, and is continuing to render, satisfactory performance of his responsibilities to the HBA.

When the homebuyer has met these conditions precedent, the LHA shall give the homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within

the first two years of his occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to his EHPA. If the homebuyer fails to meet either his obligation to achieve the minimum EHPA balance, as specified, or his obligation thereafter to continue adding to the EHPA, the LHA and the HBA shall investigate and take appropriate corrective action, including termination of the Agreement by the LHA in accordance with § 904.107(m).

(d) *Additional equity through maintenance of common property.* Homebuyers may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only pursuant to a prior written agreement between the homebuyer and the LHA (or the home owners association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the LHA shall notify the HBA and shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the LHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the LHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances; (ii)

the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and (iii) the aggregate uninvested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to his home within a shorter period, he may, either periodically or in a lump sum, voluntarily make payments over and above his required monthly payments. Such voluntary payments shall be deposited to his credit in his EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the LHA, a homebuyer's EHPA may be used to pay his delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the LHA or the HBA.

(h) *Annual statement to homebuyer.* The LHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in his EHPA, and (2) the amount in his NRMR. During the year, any maintenance or repair done on the dwelling by the LHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for his home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 904.113 and § 904.115.

(j) *Application of EHPA upon vacating of dwelling.* (1) In the event a Homebuyers Ownership Opportunity Agreement with the LHA is terminated or if the homebuyer vacates the home (see § 904.107 (m), (n) and (o)), the LHA shall charge against the homebuyer's EHPA the amounts required to pay

(i) The amount due the LHA, including the monthly payments the homebuyer is obligated to pay up to the date he vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed

30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 904.107; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 904.107.

(2) If the EHPA balance is not sufficient to cover all of these charges, the LHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the LHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date he vacates, even though the actual cost of such repair has not yet been determined, if he has given the LHA notice of intention to vacate at least 30 days prior to the date he vacates and if the amount to be charged against his EHPA for such repairs is based on the LHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

§ 904.111 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The LHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing